

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Case No. 1:19-cv-2912

Plaintiff,

v.

DANIEL BERNSTEIN and
YANA BERNSTEIN,

Defendants.

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COMPLAINT

The United States of America, with the authorization of the Secretary of the Treasury and at the direction of the Attorney General of the United States, brings this action under 31 U.S.C. § 3711(g)(4)(C) to collect: (1) an outstanding civil penalty assessed against Daniel Bernstein for his failure to timely report his financial interest in foreign bank or other financial accounts, along with an accrued late-payment penalty and interest; and (2) an outstanding civil penalty assessed against Yana Bernstein for her failure to timely report her financial interest in foreign bank or other financial accounts, along with an accrued late-payment penalty and interest. In support of its complaint, the United States alleges as follows:

Jurisdiction

1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, 1355(a).
2. Daniel Bernstein resides in Brooklyn, New York within the jurisdiction of this Court.
3. Yana Bernstein resides in Brooklyn, New York within the jurisdiction of this Court.

Facts Common to Both Counts

4. In 2002 a bank or other financial account was opened at UBS AG in Switzerland with an account number ending 6040 (“UBS Account 6040”).
5. SDL Investments, Inc., a company incorporated in the British Virgin Islands, was designated the account holder of UBS Account 6040.
6. Daniel Bernstein identified himself as the beneficial owner of the account assets when UBS Account 6040 was opened, and later in 2002 identified himself, Yana Bernstein, and their two daughters as the beneficial owners of the account assets.
7. In 2004, Daniel and Yana Bernstein opened a bank or other financial account at UBS in Switzerland, with an account number ending 4359 (“UBS Account 4359”) and with themselves designated as the account holders and beneficial owners of the account assets.
8. When the Bernsteins opened UBS Account 4359, they identified themselves as United States citizens, waived the right to invest in U.S. securities, and instructed UBS to retain all correspondence for the account for a fee.
9. Upon information and belief, in 2005 UBS Account 6040 was closed and the account funds were transferred to UBS Account 4359.
10. On February 18, 2009, the U.S. Department of Justice issued a press release announcing that UBS had entered into a deferred prosecution agreement on charges of conspiring to defraud the United States by impeding the IRS and that, as part of the agreement, UBS had agreed “to immediately provide the United States government with the identities of, and account information for, certain United States customers.”
11. By letter dated February 20, 2009, Daniel Bernstein instructed UBS to liquidate the securities in UBS Account 4359 except for certain bond investments, transfer the bonds

and cash to an account at “Bank Sal. Oppenheim jr. & Cie. (Schwiez) AG” [*sic*], and close the UBS account.

12. During at least a part of the year in 2009, Daniel and Yana Bernstein had a financial interest in bank or financial accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. in Switzerland.
13. Despite having a financial interest in one or more Swiss bank or financial accounts from 2002 through 2009, Daniel and Yana Bernstein filed joint federal income tax returns for those tax years which reported on Schedule B that they did not have a financial interest in or signature authority over a financial account in a foreign country at any time during the given year.
14. During the 2010 calendar year, Daniel and Yana Bernstein had a financial interest in bank or other financial accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. in Switzerland (hereinafter “Sal. Oppenheim Accounts”).
15. During 2010, the aggregate balance of the Sal. Oppenheim Accounts exceeded \$10,000.
16. Daniel and Yana Bernstein filed a joint federal income tax return (Form 1040) for the 2010 tax year.
17. The Bernsteins’ 2010 Form 1040 did not report income from the Sal. Oppenheim Accounts and did not answer the question on line 7a of Schedule B as to whether they had a financial interest in or signature authority over a financial account located in a foreign country at any time during the year.
18. An asterisk inserted at the end of line 7a on the Bernsteins’ 2010 Schedule B, as well as at other lines on their 2010 return and accompanying schedules, referenced an attachment which stated in part that the Bernsteins “invoke their rights under the Fifth Amendment of the United States Constitution not to incriminate themselves.”

Count I – Reduce FBAR Penalty Liability against Daniel Bernstein to Judgment

19. Daniel Bernstein has been a United States citizen for over twenty years.
20. Daniel Bernstein was required to report his financial interest in the Sal. Oppenheim Accounts during 2010 to the Commissioner of Internal Revenue and provide the information specified in Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (“FBAR”), on or before June 30, 2011.
21. On June 28, 2011, Daniel Bernstein submitted a Form TD F 90-22.1 for the 2010 calendar year that was incomplete, as the Form did not report any financial accounts and stated “FIFTH AMENDMENT” in the space provided for account information.
22. Daniel Bernstein failed to report his financial interest in the Sal. Oppenheim Accounts during 2010 as required under 31 C.F.R. § 1010.350 on or before June 30, 2011.
23. Daniel Bernstein’s failure to timely report his financial interest in the Sal. Oppenheim Accounts during 2010 was willful.
24. On March 2, 2015, Daniel Bernstein filed an FBAR for the 2010 calendar year which reported a separately owned account at HSBC Bank Canada and four accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. jointly owned with Yana Bernstein.
25. On May 18, 2017, the IRS assessed a civil penalty (“FBAR penalty”) of \$262,288.50 against Daniel Bernstein pursuant to 31 U.S.C. § 5321 for his willful failure to timely report his financial interest in the Sal. Oppenheim Accounts during the 2010 calendar year by June 30, 2011, as required by 31 U.S.C. § 5314 and its implementing regulations.
26. By letter dated May 18, 2017, the Internal Revenue Service notified Daniel Bernstein of the FBAR Penalty assessment and demanded payment.
27. The balance due on the FBAR Penalty assessed against Daniel Bernstein, plus accrued statutory additions and interest through August 7, 2018, including a late-payment penalty

pursuant to 31 U.S.C. 3717(e)(2), is \$283,386.56. Statutory additions and interest continue to accrue from August 7, 2018.

Count II – Reduce FBAR Penalty Liability against Yana Bernstein to Judgment

28. Yana Bernstein has been a United States citizen for over twenty years.
29. Yana Bernstein was required to report her financial interest in the Sal. Oppenheim Accounts during 2010 to the Commissioner of Internal Revenue and provide the information specified in Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, on or before June 30, 2011.
30. On June 28, 2011, Yana Bernstein submitted a Form TD F 90-22.1 for the 2010 calendar year that was incomplete, as the Form did not report any financial accounts and stated “FIFTH AMENDMENT” in the space provided for account information.
31. Yana Bernstein failed to report her financial interest in the Sal. Oppenheim Accounts during 2010 as required under 31 C.F.R. § 1010.350 on or before June 30, 2011.
32. Yana Bernstein’s failure to timely report her financial interest in the Sal. Oppenheim Accounts during 2010 was willful.
33. On March 2, 2015, Daniel Bernstein filed an FBAR for the 2010 calendar year which reported a separately owned account at HSBC Bank Canada and four accounts at Bank Sal. Oppenheim Jr. & Cie. (Switzerland) Ltd. jointly owned with Yana Bernstein.
34. On May 18, 2017, the IRS assessed a civil penalty of \$262,288.50 against Yana Bernstein pursuant to 31 U.S.C. § 5321 for her willful failure to timely report her financial interest in the Sal. Oppenheim Accounts during the 2010 calendar year by June 30, 2011, as required by 31 U.S.C. § 5314 and its implementing regulations.
35. By letter dated May 18, 2017, the Internal Revenue Service notified Yana Bernstein of the FBAR Penalty assessment and demanded payment.

36. The balance due on the FBAR Penalty assessed against Yana Bernstein, plus accrued statutory additions and interest through August 7, 2018, including a late-payment penalty pursuant to 31 U.S.C. 3717(e)(2), is \$283,386.56. Statutory additions and interest continue to accrue from August 7, 2018.

WHEREFORE, the United States requests that this Court:

- (1) enter judgment against Daniel Bernstein in the amount of \$283,386.56, plus statutory additions and interest from August 7, 2018, for his unpaid FBAR liabilities;
- (2) enter judgment against Yana Bernstein in the amount of \$283,386.56, plus statutory additions and interest from August 7, 2018, for her unpaid FBAR liabilities; and
- (3) award the United States its costs and such further relief as the Court deems just and proper.

Respectfully submitted,

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